

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SAFE SKIES CLEAN WATER
WISCONSIN, INC.,

Plaintiff,

Case No. 3:20-cv-1086-wmc

v.

NATIONAL GUARD BUREAU, *et al.*,

Defendants.

ANSWER

Pursuant to Federal Rules of Civil Procedure 8 and 12, defendants National Guard Bureau and General Daniel R. Hokanson, Chief, National Guard Bureau (collectively “Defendants”) hereby answer Plaintiff’s Complaint, ECF No. 1. The numbered paragraphs and sections of this Answer correspond to the numbered paragraphs and sections of the Complaint.

INTRODUCTION¹

1. The allegations in this Paragraph consist of Plaintiff’s characterizations of its claims, to which no response is required. To the extent a response is required, Defendants deny the allegations.

2. This Paragraph provides Plaintiff’s legal conclusions, to which no response is required. To the extent a response is required, Defendants deny those allegations.

3. Defendants admit that the National Guard Bureau (“NGB”) was established as a

¹ The headings in this Answer correspond to the major headings in the Complaint, and Defendants include them solely to provide convenient reference to the Complaint. They do not form any part of the Answer. To the extent the headings in the Complaint or the Answer include substantive allegations, Defendants deny them.

joint activity of the Department of Defense (“DoD”). Defendants further admit that DoD Directive 5105.77 describes the organization and management of the NGB to include the Director of Air National Guard (“ANG”).

4. Defendants admit the allegations in this Paragraph.

5. Defendants admit the allegations in this Paragraph.

6. This Paragraph provides Plaintiff’s legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations in this Paragraph.

JURISDICTION

7. Defendants admit that 28 U.S.C. § 1331 confers jurisdiction on this Court to hear claims “arising under” the laws of the United States. The remaining allegations in this Paragraph provide Plaintiff’s legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations in this Paragraph.

8. This Paragraph provides Plaintiff’s legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations in this Paragraph.

9. This Paragraph provides Plaintiff’s legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations in this Paragraph.

VENUE

10. This Paragraph provides Plaintiff’s legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations in this Paragraph.

PARTIES

11. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

12. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

13. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

14. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

15. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

16. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

17. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

18. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

19. Defendants admit the allegations in this Paragraph.

20. Defendants admit that the NGB is an agency of the federal government. The remaining allegations in this Paragraph purport to quote and/or characterize Federal statutes and regulations. Those laws are the best evidence of their contents and Defendants deny any allegations inconsistent with them. Otherwise, the allegations in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendants

deny those allegations.

21. Defendants admit the allegations in this Paragraph.

22. Defendants admit the allegations in this Paragraph.

FACTUAL BACKGROUND

The 115th Fighter Wing and the Project

23. Defendants admit the allegations in this Paragraph.

24. Defendants admit the allegations in this Paragraph.

25. Defendants admit that in 2015 a preliminary assessment (“PA”) was conducted at Truax Field, and that a site inspection (“SI”) was conducted at Truax Field and finalized in March of 2019. The remaining allegations in this Paragraph purport to quote and characterize the PA and SI, which speak for themselves and are the best evidence of their contents; to the extent the allegations are inconsistent with the PA and SI they are denied.

26. The allegations in this Paragraph purport to quote and characterize the SI, which speaks for itself and is the best evidence of its contents; to the extent the allegations in this Paragraph are inconsistent with the SI they are denied.

27. The allegations in this Paragraph purport to quote and characterize the SI, which speaks for itself and is the best evidence of its contents; to the extent the allegations in this Paragraph are inconsistent with the SI they are denied.

28. Defendants admit the allegations in this Paragraph.

29. The allegations in this Paragraph purport to quote and characterize the Project’s Environmental Assessment (“EA”), which speaks for itself and is best evidence of its contents; to the extent the allegations are inconsistent with the EA, they are denied.

30. Defendants deny the allegations in this Paragraph.

31. Defendants admit the allegations in this Paragraph.

32. Defendants admit the allegations in this Paragraph.

33. Defendants admit the allegations in this Paragraph.

34. Defendants admit that the Environmental Impact Statement for the F-35A Operation Beddown Air National Guard was finalized in February 2020 and that the EA for Construction and Demolition Projects at the 115th Fighter Wing Installation, Dane County Regional Airport, Madison, Wisconsin, was finalized in October 2019. Defendants deny the remaining allegations in this Paragraph.

35. Defendants admit the allegations in this Paragraph.

36. Defendants deny the allegations in this Paragraph.

37. Defendants deny the allegations in this Paragraph.

The City of Madison's Drinking Water Supply and PFAS in Wells

38. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

39. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

40. Defendants admit the allegations in this Paragraph.

41. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

42. The allegations this Paragraph purport to quote and characterize the SI, which speaks for itself and is best evidence of its contents; to the extent the allegations are inconsistent with the SI, they are denied.

The 303(d) Impaired Waters in the Madison Area

- 43. Defendants admit the allegations in this Paragraph.
- 44. Defendants admit the allegations in this Paragraph.
- 45. Defendants deny the allegations in this Paragraph.
- 46. Defendants deny the allegations in this Paragraph.

CLAIMS FOR RELIEF

Count I

Violation of NEPA – Failure to Prepare an Environmental Impact Statement

- 47. Defendants adopt by reference their responses to Paragraphs 1 through 46.
- 48. The allegations in this Paragraph purport to quote and/or characterize a Federal statute. That statute is the best evidence of its contents and Defendants deny any allegations inconsistent with it. Otherwise, the allegations in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations.
- 49. This Paragraph provides Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny those allegations.
- 50. This Paragraph provides Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny those allegations.

Count II

Violation of NEPA – Failure to Prepare a Supplemental Environmental Assessment

- 51. Defendants adopt by reference their responses to Paragraphs 1 through 50.
- 52. The allegations in this Paragraph purport to quote and/or characterize Federal regulations. Those regulations are the best evidence of their contents and Defendants deny any allegations inconsistent with them. Otherwise, the allegations in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendants

deny those allegations.

53. Defendants admit that the National Guard Bureau received a letter from the Wisconsin Department of Natural Resources in October 2019. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations in this Paragraph, and therefore deny those allegations.

54. Defendants admit the allegations in this Paragraph.

55. Defendants deny the allegations in this Paragraph.

56. Defendants admit the allegations in this Paragraph.

57. The allegations in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations.

Count III
Violation of NEPA – Improper Segmentation of Projects

58. Defendants adopt by reference their responses to Paragraphs 1 through 57.

59. The allegations in this Paragraph purport to quote and/or characterize a Federal statute. That statute is the best evidence of its contents and Defendants deny any allegations inconsistent with it. Otherwise, the allegations in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations.

60. Defendants deny the allegations in this Paragraph.

61. The allegations in this Paragraph purport to quote and/or characterize Federal regulations. Those regulations are the best evidence of their contents, and Defendants deny any allegations inconsistent with them. Otherwise, the allegations in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations.

62. Defendants deny the allegations in this Paragraph.

63. Defendants deny the allegations in this Paragraph.

64. Defendants deny the allegations in this Paragraph.

65. Defendants deny the allegations in this Paragraph.

Count IV

Violation of NEPA – Failure to Consider Cumulative Impacts

66. Defendants adopt by reference their responses to Paragraphs 1 through 65.

67. The allegations in this Paragraph purport to quote and/or characterize Federal regulations. Those regulations are the best evidence of their contents and Defendants deny any allegations inconsistent with them. Otherwise, the allegations in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations.

68. Defendants deny the allegations in this Paragraph.

69. Defendants deny the allegations in this Paragraph.

70. Defendants deny the allegations in this Paragraph.

71. Defendants deny the allegations in this Paragraph.

Count V

Violation of NEPA – Failure to Adequately Consider Environmental Justice

72. Defendants adopt by reference their responses to Paragraphs 1 through 71.

73. The allegations in this Paragraph purport to quote and/or characterize Federal regulations. Those regulations are the best evidence of their contents and Defendants deny any allegations inconsistent with them. Otherwise, the allegations in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations.

74. Defendants deny the allegations in this Paragraph.

75. Defendants deny the allegations in this Paragraph.

76. Defendants deny the allegations in this Paragraph.

77. Defendants admit the investigation recommended by the SI has not been completed. Defendants deny the remaining allegations in this Paragraph.

78. Defendants lack information sufficient to form a belief as to the truth of the allegations in this Paragraph, and therefore deny those allegations.

79. Defendants deny the allegations in this Paragraph.

Count VI
Violation of NEPA – Failure to Adequately Address Alternatives

80. Defendants adopt by reference their responses to Paragraphs 1 through 79.

81. Defendants deny the allegations in this Paragraph.

Count VII
Violation of NEPA – Failure to Adequately Consider Climate Change

82. Defendants adopt by reference their responses to Paragraphs 1 through 81.

83. Defendants deny the allegations in this Paragraph.

84. Defendants deny the allegations in this Paragraph.

85. Defendants deny the allegations in this Paragraph.

86. Defendants deny the allegations in this Paragraph.

Count VIII
Violation of NEPA and the APA – Failure to Provide Adequate Notice and Public Participation

87. Defendants adopt by reference their responses to Paragraphs 1 through 86.

88. Defendants deny the allegations in this Paragraph.

89. Defendants admit that notices were included in the print edition of the Wisconsin State Journal on April 7, 2019 and April 21, 2019. Defendants deny the remaining allegations in

this Paragraph.

90. Defendants deny the allegations in this Paragraph.

91. This Paragraph provides Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny those allegations.

Count IX
Violation of the Administrative Procedure Act

92. Defendants adopt by reference their responses to Paragraphs 1 through 91.

93. This Paragraph provides Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny those allegations.

DEMAND FOR RELIEF

Paragraphs 1 through 4, under the caption "Demand for Relief," provide Plaintiff's prayers for relief. To the extent the Federal Rules of Civil Procedure or this Court require a response, Defendants deny that Plaintiff is entitled to the relief requested or to any relief whatsoever.

GENERAL DENIAL

All of the allegations in Plaintiff's Complaint which have not been specifically admitted, denied, or otherwise answered are hereby denied.

DEFENSES

1. Plaintiff lacks standing to assert the claims alleged in the Complaint.

2. Plaintiff fails to state a claim upon which relief can be granted.

3. Plaintiff has failed to exhaust its administrative remedies for some or all of its claims.

PRAYER

For the foregoing reasons, Defendants request that the Court dismiss the Complaint in its

entirety, render judgment for Defendants and against Plaintiff, and grant Defendants such other and further relief that the nature of the case and justice requires.

Respectfully submitted this 12th day of February, 2021,

JEAN E. WILLIAMS
Acting Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division

/s/ Gregory M. Cumming

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